

## Montgomery County Code

**Article V. Police Labor Relations. [Note]**

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**Sec. 33-75. Declaration of policy.**

It is the public policy of this county, pursuant to charter section 510, enacted as a result of citizen initiative, and purpose of this article to promote a harmonious, peaceful and cooperative relationship between the county government and its police employees and to protect the public by assuring, at all times, the responsive, orderly and efficient operation of the police department. Since unresolved disputes in the police service are injurious to the public and to police employees as well, adequate means should be provided for preventing such unresolved disputes and for resolving them when they occur. To that end, it is in the public interest that police employees have the opportunity to bargain collectively over wages, hours, and other terms and conditions of employment through a representative of their choice or to refrain therefrom; and that any collective bargaining between the county government and a representative of those police employees be done in good faith with no interference with the orderly process of government and furthermore, that agreements reached through collective bargaining be implemented.

It is also recognized, however, that police employee organizations and the county government each possess substantial means by which they may initiate actions regarding the wages, hours and working conditions of employees. Consequently, in order to preserve an appropriate balance between labor and management in the police service, the council hereby declares that once a representative has been voluntarily selected, collective bargaining shall be utilized in place of, but not in addition to, existing means of initiating governmental action as to those subjects which are defined as appropriate for collective bargaining in this article. (1982 L.M.C., ch. 53, § 3.)

**Editor's note**—Section 33-75 is cited in Mayor and City Council for Ocean City v. Bunting, 168 Md. App. 134, 895 A.2d 1068 (2006).

See County Attorney Opinion dated 3/12/09 explaining the Inspector General's authority to investigate an ongoing personnel matter as part of the goal of detecting and deterring fraud, waste and abuse.

**Sec. 33-76. Definitions.**

When used in this article:

*Agency shop* means a provision in a collective bargaining agreement requiring, as a condition of continued employment, that bargaining unit employees pay a service fee not to exceed the monthly membership dues uniformly and regularly required by the employee organization of all of its members. An agency shop agreement shall not require the payment of initiation fees, an assessment, fines or any other collections or their equivalent, as a condition of continued employment.

*To bargain collectively* means to meet at reasonable times and places and to negotiate in good faith with respect to appropriate subjects as set out in subsection 33-80(a) of this article.

*Certified representative* means an employee organization selected in accordance with this chapter to represent a unit.

*Employee* means any police officer classified as a sergeant, master police officer I, master police officer II, police officer I, police officer II, police officer III, or police officer candidate, or an equivalent nonsupervisory classification, but not a police officer in any higher classification.

*Employer* means the county executive and the Executive's designees.

*Employee organization* means any organization which admits to membership employees and which has as a primary purpose the representation of such employees in collective bargaining, and includes any person acting as an officer, representative or agent of said organization. Such organization shall not admit to membership any person other than law enforcement officers.

*Lockout* means any action taken by the employer to interrupt or prevent the continuity of work properly and usually performed by the employee for the purpose and with the intent of either coercing the employees into relinquishing rights guaranteed by this article or of bringing economic pressure on employees for the purpose of securing the agreement of their certified representative to certain collective bargaining terms.

*Mediation* means an effort by an impartial third party confidentially to assist in resolving, through interpretation, suggestion and advice, a dispute arising out of collective bargaining between the employer and the certified representative.

*Strike* means a concerted failure to report for duty, absence, stoppage of work, or abstinence in whole or in part from the full and faithful performance of the duties of employment with the employer, or deviation from normal or proper work duties or activities, where any of the preceding are done in a concerted manner for the purpose of inducing, influencing or coercing the employer in the determination, implementation, interpretation, or administration of terms or conditions of employment or of the rights, privileges, or obligations of employment or of the status, recognition or authority of the employee or an employee organization.

*Unit* means all employees. (1982 L.M.C., ch. 53, § 3; 2000 L.M.C., ch. 16, § 1.)

**Editor's note**—Section 33-76 is cited in Mayor and City Council for Ocean City v. Bunting, 168 Md. App. 134, 895 A.2d 1068 (2006).

See County Attorney Opinion dated 9/26/11 regarding a union's authority to engage in collective bargaining on behalf of current employees, but not on behalf of future employees.

### **Sec. 33-77. Permanent umpire.**

(a) There is hereby created the position of permanent umpire, so as to provide for the effective implementation and administration of sections 33-79 and 33-82 of this article concerning selection, certification and decertification procedures and prohibited practices. The permanent umpire shall exercise the following powers and perform the following duties and functions:

(1) Adopt regulations under method (1) of section 2A-15 of this Code, for the implementation and administration of sections 33-79 and 33-82 as are consistent with this article;

(2) Request from the employer or any employee organization, and the employer or such organization may at its discretion provide, such relevant assistance, service and data as will enable the permanent umpire to properly carry out his functions;

(3) Hold hearings and make inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and compel by issuance of subpoenas the attendance of witnesses and the production of relevant documents;

(4) Hold and conduct elections for certification or decertification pursuant to the provisions of this article and issue said certification or decertification;

(5) Investigate and attempt to resolve or settle, as provided in this article, charges of engaging in prohibited practices; however, if the employer and a certified representative have negotiated a valid grievance procedure, the permanent umpire must defer to that procedure for the resolution of disputes properly submissible to the procedure absent a showing that such deferral will result or has resulted in the application of principles repugnant to this article; furthermore, the permanent umpire shall defer to state procedures in those matters which are governed by the law enforcement officers bill of rights, article 27, sections 727 et seq., Annotated Code of Maryland.\*

(6) Obtain any necessary support services and make necessary expenditures in the performance of duties to the extent provided for these purposes in the annual budget of Montgomery County; and

(7) Exercise any other powers and perform any other duties and functions as may be specified in sections 33-79 and 33-82 of this article.

(b) The permanent umpire must be appointed by the County Executive, subject to confirmation by the County Council, serve for a term of 5 years, and may be reappointed to another 5-year term. The permanent umpire must not be reappointed if, during the period between 60 days and 30 days before the umpire's term expires, the certified representative files a written objection to the umpire's reappointment with the County Executive.

(c) If the permanent umpire dies, resigns, becomes disabled, or otherwise becomes unable or ineligible to continue to serve, the Executive must appoint a new permanent umpire, subject to confirmation by the Council, to serve the remainder of the previous umpire's term. The umpire appointed under this subsection may be reappointed under subsection (b).

(d) The permanent umpire must be a person with experience as a neutral in the field of labor relations and must not be a person who, because of vocation, employment, or affiliation, can be categorized as a representative of the interests of the employer or any employee organization.

(e) The permanent umpire must be paid a daily fee as specified in a contract with the County, and must be reimbursed for necessary expenses incurred in performing the duties of umpire. (1982 L.M.C., ch. 53, § 3, 1984 L.M.C., ch. 24, § 39; 2007 L.M.C., ch. 1, § 1.)

## **Sec. 33-78. Employee rights.**

(a) Employees shall have the right:

(1) To form, join, support, contribute to, or participate in, or to refrain from forming, joining, supporting, contributing to, or participating in, any employee organization or its lawful activities; and

(2) To be fairly represented by their certified representative, if any.

(b) The employer must extend to the certified representative the exclusive right to represent the employees for the purposes of collective bargaining, including the orderly processing and settlement of grievances as agreed by the parties.

(c) A certified representative must serve as the bargaining agent for all employees and must represent fairly and without discrimination all employees without regard to whether the employees are members of the employee organization, pay dues or other contributions to it, or participate in its affairs. However, it is not a violation of this duty for a certified representative to seek enforcement of an agency shop provision in a valid collective bargaining agreement.

(d) The right of the certified representative to receive membership dues deductions or agency shop provisions shall be determined through negotiations, unless the authority to negotiate such provisions has been suspended under section 33-84. No collective bargaining agreement may include a provision requiring membership in, participation in the affairs of, or contributions to an employee organization other than an agency shop provision. (1982 L.M.C., ch. 53, § 3; 2000 L.M.C., ch. 16, § 1.)

### **Sec. 33-79. Selection, certification and decertification procedures.**

(a) The certification or decertification of an employee organization as the unit's representative for the purpose of collective bargaining shall be initiated in accordance with the following procedures:

(1) Any employee organization seeking certification as representative of the unit shall file a petition stating its name, address and its desire to be certified with the permanent umpire, and shall transmit forthwith a copy of such, not including the names of the supporting employees, to the employer. Said petition must contain the uncoerced signature of thirty (30) percent of the employees within the unit signifying their desire to be represented by the employee organization for purposes of collective bargaining.

(2) Where an employee organization has been certified, an employee within the unit may file a petition with the permanent umpire and shall transmit forthwith a copy of such to the employer and the certified representative, not including the names of the supporting employees, for decertification of the certified representative. The petition must contain the uncoerced signatures of at least thirty (30) percent of the employees within the unit alleging that the employee organization presently certified is no longer the choice of the majority of the employees in the unit.

(3) The employer may file a petition with the permanent umpire seeking an election for certification of an employee organization or, where an employee organization is so certified, to cause decertification of the representative where the employer has reason to believe that the certified representative is not or is no longer the choice of the majority of the employees of the unit, and shall transmit a copy of such to the employee organization seeking to obtain or retain certification.

(4) Petitions may be filed between September 1 and September 30 of any year, but no sooner than 22 months following an election held pursuant to this section.

(5) If a lawful collective bargaining agreement is in effect, no petition shall be entertained unless filed during September of the final year of the agreement.

(b) If the permanent umpire determines that a petition is properly supported and timely filed, the permanent umpire shall cause an election of all eligible employees to be held within a reasonable time, but no later than October 20 of that year, to determine if and by whom the employees wish to

be represented, as follows:

(1) All elections shall be conducted under the supervision of the permanent umpire and shall be conducted by secret ballot at such time and place as the permanent umpire may direct. The permanent umpire may select and retain services of an agency of the State of Maryland, or similarly neutral body to assist in conducting the election.

(2) The election ballots shall contain, as choices to be made by the voter, the names of the petitioning or certified employee organization, the name or names of any other employee organization showing written proof at least ten (10) days before the election of at least ten (10) percent representation of the employees within the unit, and a choice that the employee does not desire to be represented by any of the named employee organization(s).

(3) The employer and each party to the election may be represented by observers selected in accordance with such limitations and conditions as the permanent umpire may prescribe.

(4) Observers may challenge for good cause the eligibility of any person to vote in the election. Challenged ballots shall be impounded pending either agreement of the parties as to the validity of such challenge or the permanent umpire's decision thereon, unless the number of challenges is not determinative, in which latter event the challenged ballot(s) shall be destroyed.

(5) After the polls have been closed, the valid ballots cast shall be counted by the permanent umpire in the presence of the observers.

(6) The permanent umpire immediately shall prepare and serve upon the employer and each of the parties a report certifying the results of the election. If, and only if, an employee organization has received the votes of a majority of the employees who voted, the permanent umpire shall certify the employee organization so elected as the exclusive agent. If no employee organization has received the votes of a majority of the employees, the permanent umpire shall certify no representative, but if a majority of the employees do not vote for no representation, a runoff election shall be conducted. The runoff election shall contain the two (2) choices which received the largest and second largest number of votes in the original election.

(c) The aforesaid certification of results shall be final unless, within seven (7) days after service of the report and certification, the employer or any other party serves on all parties and files with the permanent umpire objections to the election. Objections shall be verified and shall contain a concise statement of facts constituting the grounds thereof. The permanent umpire shall investigate the objections and, if substantial factual issues exist, the permanent umpire shall hold a hearing thereon. Otherwise, the permanent umpire may determine the matter without hearing. The permanent umpire may invite, either by rule or by invitation, written or oral argument to assist in determination of the merits of the objections. If the permanent umpire finds that the election was conducted in substantial conformity with this article, the permanent umpire shall confirm the certification initially issued. If the permanent umpire finds that the election was not held in substantial conformity with this article, the permanent umpire shall cause another election to be held pursuant to the provisions of this section.

(d) The cost of conducting an election shall be paid by the county.

(e) Voluntary recognition is prohibited under this article, and no certification may be issued without an election except as provided for in subsection 33-79(a)(6). (1982 L.M.C., ch. 53, § 3; 2003 L.M.C., ch. 22, § 1.)

**Sec. 33-80. Collective bargaining.**

(a) *Duty to bargain; matters subject to bargaining.* A certified employee organization and the employer must bargain collectively on the following subjects:

- (1) Salary and wages, provided, however, that salaries and wages shall be uniform for all employees in the same classification;
- (2) Pension and retirement benefits for active employees only;
- (3) Employee benefits such as, but not limited to, insurance, leave, holidays and vacation;
- (4) Hours and working conditions, including the availability and use of personal patrol vehicles;
- (5) Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of the collective bargaining agreement, which may include binding third party arbitration and provisions for exclusivity of forum;
- (6) Matters affecting the health and safety of employees; and
- (7) Amelioration of the effect on employees when the employer's exercise of rights listed in subsection (b) causes a loss of existing jobs in the unit.

(b) *Employer rights.* This article and any agreement pursuant hereto shall not impair the right and responsibility of the employer.

- (1) To determine the overall budget and mission of the employer and any agency of county government;
- (2) To maintain and improve the efficiency and effectiveness of operations;
- (3) To determine the services to be rendered and the operations to be performed;
- (4) To determine the overall organizational structure, methods, processes, means, job classifications or personnel by which operations are to be conducted and the location of facilities;
- (5) To direct or supervise employees;
- (6) To hire, select and establish the standards governing promotion of employees and to classify positions;
- (7) To relieve employees from duties because of lack of work or funds, or under conditions when the employer determines continued work would be inefficient or nonproductive;
- (8) To make and enforce rules and regulations not inconsistent with this law or a collective bargaining agreement;
- (9) To take actions to carry out the mission of government in situations of emergency;
- (10) To transfer, assign and schedule employees.

(c) *Exemption.* Nothing contained in this article shall be construed to limit the discretion of the employer voluntarily to discuss with the representatives of its employees any matter concerning the employer's exercise of any of the enumerated rights set forth in subsection 33-80(b) above, but such matters shall not be subject to bargaining.

(d) *Time limits.* Collective bargaining shall commence no later than November 1 preceding a fiscal year for which there is no contract between the employer and the certified representative and shall be concluded by January 20. The resolution of an impasse in collective bargaining shall be completed by February 1. These time limits may be waived only by prior written consent of the parties.

(e) *Term of agreement.* Any provision of automatic renewal or extension of a collective bargaining agreement shall be void. No agreement shall be valid if it extends for less than one year or for more than three years. All agreements shall become effective July 1 and end June 30.

(f) *Effective date of agreement.* Any collective bargaining agreement shall become effective only after ratification of the agreement by the employer and the certified representative, except as provided in subsection 33-81(b)(7). A certified representative may provide its own rules for ratification procedures.

(g) *Submission to Council.* A ratified agreement shall be binding on the employer and the certified representative, and shall be reduced to writing and executed by both parties. In each proposed annual operating budget, the County Executive shall describe any collective bargaining agreement or amendment to an agreement that is scheduled to take effect in the next fiscal year and estimate the cost of implementing that agreement. Any term or condition of a collective bargaining agreement which requires an appropriation of funds or enactment, repeal or modification of a County law shall be timely submitted to the County Council by the employer by April 1, unless extenuating circumstances require a later date. If a later submission is necessary, the employer shall specify the submission date and the reasons for delay to the Council President by April 1. The employer shall make a good faith effort to have such term or condition implemented by Council action. Each submission to the Council shall include:

(1) all proposed legislation and regulations necessary to implement the collective bargaining agreement;

(2) all changes from the previous collective bargaining agreement, indicated by brackets and underlines or a similar notation system; and

(3) all side letters or other extraneous documents that are binding on the parties.

(h) *Council review.* On or before May 1, the County Council shall indicate by resolution its intention to appropriate funds for or otherwise implement the agreement or its intention not to do so, and shall state its reasons for any intent to reject any part of the agreement. The Council, by majority vote taken on or before May 1, may defer the May 1 deadline to any date not later than May 15. If the Council indicates its intention to reject any part, it shall designate a representative to meet with the parties and present the Council's views in their further negotiations. This representative shall also participate fully in stating the Council's position in any ensuing impasse procedure. The parties shall thereafter meet as promptly as possible and attempt to negotiate an agreement acceptable to the Council. Either of the parties may initiate the impasse procedure set forth in Section 33-81. The results of the negotiation or impasse procedure shall be submitted to the Council on or before May 10. If the Council has deferred the May 1 deadline, that action automatically postpones the May 10 deadline by the same number of days.

(i) *Adjustments.* Any agreement shall provide either for automatic reduction or elimination of conditional wage or benefits adjustments if:

(1) the Council does not take action necessary to implement the agreement, or

(2) sufficient funds are not appropriated for any fiscal year when the agreement is in effect.

(j) Later years. The process and timetable in subsection (h) apply to Council review of wage or benefits adjustments after the first year of any multi-year agreement.

(k) Out-of-cycle amendments. The process in subsection (h) applies to Council review of any amendment to a collective bargaining agreement that the Council receives after May 15 of any year, but the deadlines in subsection (h) do not apply. The Council President shall set action deadlines which result, to the extent feasible, in a similar timetable relative to the date the Council received the amendment. (1982 L.M.C., ch. 53, § 3.; 1993 L.M.C., ch. 12, § 1; 2000 L.M.C., ch. 16, § 1; 2003 L.M.C., ch. 22, § 1; 2011 L.M.C., ch. 16, § 1.)

**Editor's note**—See County Attorney Opinion dated 9/26/11 regarding a union's authority to engage in collective bargaining on behalf of current employees, but not on behalf of future employees. See County Attorney Opinion dated 10/28/10 comparing the limits on Council authority to make changes to retirement benefits with its ability to modify health benefits. See County Attorney Opinion dated 7/22/10 regarding the steps in the out-of-cycle collective bargaining process. See County Attorney Opinion dated 5/4/09 regarding the steps in the collective bargaining process. See County Attorney Opinion dated 4/28/08 regarding collective bargaining negotiations of benefits for current employees and future retirees.

2011 L.M.C., ch. 16, was petitioned to referendum and was approved by a majority of the registered voters on November 6, 2012.

2011 L.M.C., ch. 13, §§ 2 and 3, effective July 2, 2012, state in part:

Sec. 2. Implementation. Notwithstanding any other provision of law, including § 33-80(a)(7) and § 33-107(a)(7), the implementation of any amendment to County Code Chapter 33 in Section 1 of this Act concerning disability retirement is not subject to collective bargaining with a certified representative of employees in any bargaining unit.

Sec. 3. The amendments to County Code Chapter 33 made in Section 1 of this Act apply to any disability occurring on or after the date this Act takes effect [July 1, 2012].

### **Sec. 33-81. Impasse procedure.**

(a) Before September 10 of any year in which the employer and a certified representative bargain collectively, they shall choose an impasse neutral either by agreement or through the processes of the American Arbitration Association. The impasse neutral shall be required to be available during the period from January 20 to February 1. Fees, costs and expenses of the impasse neutral shall be shared equally by the employer and the certified representative.

(b) (1) During the course of collective bargaining, either party may declare an impasse and request the services of the impasse neutral. If the parties have not reached agreement by January 20, an impasse exists.

(2) Whenever an impasse has been reached, the dispute shall be submitted to the impasse neutral. The impasse neutral shall attempt mediation by bringing the parties together voluntarily under such favorable auspices as will tend to effectuate the settlement of the dispute.

(3) If the impasse neutral, in the impasse neutral's sole discretion, finds that the parties are at a bona fide impasse, the impasse neutral must require each party to submit a final offer which must consist either of a complete draft of a proposed collective bargaining agreement or a complete package proposal, as the impasse neutral chooses. If only complete package proposals are required,



the impasse neutral must require the parties to submit jointly a memorandum of all items previously agreed upon.

(4) The impasse neutral may, in the impasse neutral's discretion, require the parties to submit evidence or make oral or written argument in support of their proposals. The impasse neutral may hold a hearing for this purpose at a time, date and place selected by the impasse neutral. Said hearing must not be open to the public.

(5) On or before February 1, the impasse neutral must select, as a whole, the more reasonable, in the impasse neutral's judgment, of the final offers submitted by the parties.

(A) The impasse neutral must first evaluate and give the highest priority to the ability of the County to pay for additional short-term and long-term expenditures by considering:

- (i) the limits on the County's ability to raise taxes under State law and the County Charter;
- (ii) the added burden on County taxpayers, if any, resulting from increases in revenues needed to fund a final offer; and
- (iii) the County's ability to continue to provide the current standard of all public services.

(B) After evaluating the ability of the County to pay under subparagraph (A), the impasse neutral may only consider:

- (i) the interest and welfare of County taxpayers and service recipients;
- (ii) past collective bargaining contracts between the parties, including the bargaining history that led to each contract;
- (iii) a comparison of wages, hours, benefits, and conditions of employment of similar employees of other public employers in the Washington Metropolitan Area and in Maryland;
- (iv) a comparison of wages, hours, benefits, and conditions of employment of other Montgomery County employees; and
- (v) wages, benefits, hours and other working conditions of similar employees of private employers in Montgomery County

(6) The impasse neutral must:

- (A) not compromise or alter the final offer that he or she selects;
- (B) select an offer based on the contents of that offer;
- (C) not consider or receive any evidence or argument concerning the history of collective bargaining in this immediate dispute, including offers of settlement not contained in the offers submitted to the impasse neutral; and
- (D) consider all previously agreed on items integrated with the specific disputed items to determine the single most reasonable offer.

(7) The offer selected by the impasse neutral, integrated with the previously agreed upon items, shall be deemed to represent the final agreement between the employer and the certified representative, without the necessity of ratification by the parties, and shall have the force and effect of a contract voluntarily entered into and ratified as set forth in subsection 33-80(g) above. The parties shall execute such agreement.

(c) An impasse over a reopener matter must be resolved under the procedures in this subsection. Any other impasse over a matter subject to collective bargaining must be resolved under the impasse procedure in subsections (a) and (b).

(1) If the parties agree in a collective bargaining agreement to bargain over an identified issue on or before a specified date, the parties must bargain under those terms. Each identified issue must be designated as a "reopener matter."

(2) When the parties initiate collective bargaining under paragraph (1), the parties must choose, by agreement or through the processes of the American Arbitration Association, an impasse neutral who agrees to be available for impasse resolution within 30 days.

(3) If, after bargaining in good faith, the parties are unable to reach agreement on a reopener matter by the deadline specified in the collective bargaining agreement, either party may declare an impasse.

(4) If an impasse is declared under paragraph (3), the dispute must be submitted to the impasse neutral no later than 10 days after impasse is declared.

(5) The impasse neutral must resolve the dispute under the impasse procedure in subsection (b), except that:

(A) the dates in that subsection do not apply;

(B) each party must submit to the impasse neutral a final offer on only the reopener matter; and

(C) the impasse neutral must select the most reasonable of the parties' final offers no later than 10 days after the impasse neutral receives the final offers.

(6) This subsection applies only if the parties in their collective bargaining agreement have designated:

(A) the specific reopener matter to be bargained;

(B) the date by which bargaining on the reopener matter must begin; and

(C) the deadline by which bargaining on the reopener matter must be completed and after which the impasse procedure must be implemented. (1982 L.M.C., ch. 53, § 3; 2003 L.M.C., ch 22, § 1; 2004 L.M.C., ch. 15, § 1; 2010 L.M.C., ch. 57, § 1; 2011 L.M.C., ch. 16, § 1.)

**Editor's note**—2011 L.M.C., ch. 16, was petitioned to referendum and was approved by a majority of the registered voters on November 6, 2012.

### **Sec. 33-82. Prohibited practices.**

(a) The employer or its agents or representatives are prohibited from:

(1) Interfering with, restraining or coercing employees in the exercise of any rights granted to them under the provisions of this article;

(2) Dominating or interfering with the formation or administration of any employee organization or contributing financial or other support to it, pursuant to contract or otherwise; provided that the employer and a certified representative may agree to and apply a membership dues

deduction provision as provided herein and to reasonable use of county facilities for communicating with employees;

(3) Encouraging or discouraging membership in any employee organization by discrimination in regard to hiring, tenure, wages, hours or conditions of employment, provided that nothing in this article shall preclude an agreement from containing a provision for an agency shop;

(4) Discharging or discriminating against a public employee because he has filed charges, given testimony or otherwise lawfully aided in the administration of this article;

(5) Refusing to bargain collectively with a certified representative;

(6) Refusing to reduce to writing or refusing to sign a bargaining agreement which has been agreed to in all respects;

(7) Refusing to process or arbitrate a grievance if required under a grievance procedure contained in a collective bargaining agreement;

(8) Directly or indirectly opposing the appropriation of funds or the enactment of legislation by the county council to implement an agreement reached between the employer and the certified representative pursuant to this article;

(9) Engaging in a lockout of employees;

(10) delaying or refusing to participate in the impasse procedure in Section 33-81(c)(2) after the employer implements a final offer under Section 33-81(c)(2)(C).

(b) Employee organizations, and their agents, representatives and employees, are prohibited from:

(1) Interfering with, restraining or coercing the employer or employees in the exercise of any rights granted under this article;

(2) Restraining, coercing or interfering with the employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances;

(3) Refusing to bargain collectively with the employer if such employee organization is the certified representative.

(4) Refusing to reduce to writing or refusing to sign a bargaining agreement which has been agreed to in all respects;

(5) Hindering or preventing, by threats of violence, intimidation, force or coercion of any kind, the pursuit of any lawful work or employment by any person, public or private, or obstructing or otherwise unlawfully interfering with the entrance to or egress from any place of employment, or obstructing or unlawfully interfering with the free and uninterrupted use of public roads, streets, highways, railways, airports or other ways of travel or conveyance by any person, public or private;

(6) Hindering or preventing by threats, intimidation, force, coercion or sabotage, the obtaining, use or disposition of materials, supplies, equipment or services by the employer;

(7) Taking or retaining unauthorized possession of property of the employer or refusing to do work or use certain goods or materials as lawfully required by the employer;

(8) Forcing or requiring the employer to assign particular work to employees in a particular employee organization or classification rather than to employees in another employee organization

or classification;

(9) Causing or attempting to cause the employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are neither performed or to be performed.

(c) A charge of prohibited practice may be filed by the employer, employee organization, or any individual employee. The charge or charges shall be filed with the permanent umpire, with copies to the party alleged to have committed a prohibited practice. All charges shall contain a statement of facts sufficient to enable the permanent umpire to investigate the charge. The permanent umpire may request withdrawal of and, if necessary, summarily dismiss charges if they are insufficiently supported in fact or in law to warrant a hearing. The permanent umpire shall have authority to maintain such independent investigation as the permanent umpire determines necessary and to develop rules and regulations therefor. If, upon investigation, the permanent umpire finds that a charge is sufficiently supported to raise an issue of fact or law, the permanent umpire shall hold a hearing on such charge upon notification to the parties. In any hearing, charging parties shall present evidence in support of the charges and the party or parties charged shall have the right to file an answer to the charges, to appear in person or otherwise and to present evidence in defense of the charges.

(d) If the permanent umpire determines that the person charged has committed a prohibited practice, the permanent umpire shall make findings of fact and conclusions of law and shall be empowered to issue an order requiring the person charged to cease and desist from the prohibited practice and to take such affirmative action as will remedy the violation(s) of this article. Remedies of the permanent umpire may include, but shall not be limited to, reinstating employees with or without back pay, making employees whole for any loss relating to county employment suffered as a result of any prohibited practice, withdrawing or suspending the employee organization's authority to negotiate or continue membership dues deductions, or agency shop benefits. If the permanent umpire finds that the party or parties charged have not committed any prohibited practices, the permanent umpire shall make findings of fact and conclusions of law and issue an order dismissing the charges.

(e) The permanent umpire shall not receive or entertain charges based upon an alleged prohibited practice occurring more than six (6) months prior to the filing of the charge. (1982 L.M.C., ch. 53, § 3; 2004 L.M.C., ch. 15, § 1.)

**Editor's note**—See County Attorney Opinion dated 9/26/11 regarding a union's authority to engage in collective bargaining on behalf of current employees, but not on behalf of future employees.

### **Sec. 33-83. Expression of views.**

The expression of any views, argument or opinion, or the dissemination thereof, whether orally, in writing or otherwise, shall not constitute or be evidence of a prohibited practice under any of the provisions of this law nor be grounds for invalidating any election conducted under this law if such expression or dissemination contains no threat of reprisal or promise of benefit. (1982 L.M.C., ch. 53, § 3.)

### **Sec. 33-84. Strikes and lockouts.**

(a) No employee or employee organization shall either directly or indirectly cause, instigate, encourage, condone or engage in any strike, nor the employer in any lockout. No employee or employee organization shall obstruct, impede or restrict, either directly or indirectly, any attempt to terminate a strike.

(b) The employer shall not pay, reimburse, make whole or otherwise compensate any employee for or during the period when said employee is directly or indirectly engaged in a strike, nor shall the employer thereafter compensate an employee who struck for wages or benefits lost during such strike.

(c) If an employee or employee organization violates this section, the employer, after adequate notice and a fair hearing before the permanent umpire who finds that the alleged violations have occurred and that any or all of the following actions are necessary in the public interest, may, subject to the law enforcement officer's bill of rights, Title 3, Subtitle 1 of the Public Safety Article of the Maryland Code:

(1) Impose disciplinary action, including dismissal from employment, on employees engaged in such conduct;

(2) Terminate or suspend employee organization's dues deduction privilege, if any;

(3) Revoke the certification of and disqualify the employee organization from participation in representation elections for a period up to a maximum of two (2) years.

(d) Nothing contained herein shall prohibit an employer from seeking any remedy available in a court of competent jurisdiction. (1982 L.M.C., ch. 53, § 3; 2010 L.M.C., ch. 49, § 1.)

### **Sec. 33-85. Effect of prior enactments.**

Nothing contained in this article shall be construed to repeal any laws, executive orders, legislation, rules or regulations adopted by the county and any department or agency thereof not inconsistent with the provisions of this article. (1982 L.M.C., ch. 53, § 3.)